

1 ..Title

2 An ordinance relating to code compliance; amending
3 Ordinance 4461, Section 3, as amended, and K.C.C.
4 20.24.090, Ordinance 11502, Section 13, and K.C.C.
5 20.24.175, Ordinance 13263, Section 3, as amended, and
6 K.C.C. 23.02.010, Ordinance 13263, Section 5, and K.C.C.
7 23.02.040, Ordinance 13263, Section 6, and K.C.C.
8 23.02.050, Ordinance 13263, Section 7, and K.C.C.
9 23.02.060, Ordinance 13263, Section 8, as amended, and
10 K.C.C. 23.02.070, Ordinance 13263, Section 12, and
11 K.C.C. 23.02.110, Ordinance 13263, Section 13, as
12 amended, and K.C.C. 23.02.120, Ordinance 12024, Section
13 13, as amended, and K.C.C. 23.10.040, Ordinance 13263,
14 Section 16, and K.C.C. 23.20.020, Ordinance 13263,
15 Section 17, and 23.20.030, Ordinance 13263, Section 21,
16 and K.C.C. 23.24.020, Ordinance 13263, Section 33, as
17 amended, and K.C.C. 23.24.140, Ordinance 13263, Section
18 37, as amended, and K.C.C. 23.32.010, Ordinance 13263,
19 Section 40, and K.C.C. 23.32.040, Ordinance 13263,
20 Section 43, as amended, and K.C.C. 23.36.010, Ordinance
21 13263, Section 45, and K.C.C. 23.36.030, adding new
22 sections to K.C.C. chapter 23.20, adding a new section to

K.C.C. chapter 23.36, and repealing Ordinance 12024,
Section 14, and K.C.C. 23.10.120.

..Body

SECTION 1. Ordinance 4461, Section 3, as amended, and K.C.C. 20.24.090 are
each hereby amended to read as follows:

Notice of appeal ~~((to examiner))~~ - filing.

A. Except as otherwise provided ~~((herein))~~ in this section, ~~((all))~~ a notice~~((s))~~ of
appeal ~~((to the examiner))~~ shall be filed with the county department or division issuing the
original decision with a copy provided by the department or division to the office of the
hearing examiner. ~~((Except as otherwise provided herein,))~~ The notice of appeal, together
with the required appeal fee, shall be filed within ~~((the prescribed appeal period. The~~
~~appeal period shall be fourteen calendar))~~ seventeen days ~~((and shall commence on the~~
~~third day))~~ after the mailing of the notice of decision. In cases of appeals of Type 2 land
use decisions made by the director, if WAC 197-11-340(2)(a) applies, the notice of appeal
~~((period))~~ shall be ~~((extended for an additional seven calendar))~~ filed within twenty-four
days after the mailing of the notice of decision.

B. ~~((Notices))~~ A notice of appeal of the recommendation to deny vacation of a
county road by the department of transportation~~((;))~~ shall be filed along with the required
two hundred dollar administrative fee with the clerk of the county council within thirty
days of an issuance of ~~((said))~~ the denial.

C. Except in the case of an appeal of a citation under K.C.C. chapter 23.20, ~~((f))~~ if a
notice of appeal has been filed within the applicable time period~~((provided herein))~~, the
appellant shall file a statement of appeal with the county department or division issuing the

original decision or action within ~~((a twenty one calendar))~~ seven days ~~((period commencing three days))~~ after the ~~((mailing of the notice of decision or action))~~ filing deadline for the notice of appeal. A statement of appeal is not required for an appeal of a citation issued under K.C.C. chapter 23.20. Department or division staff shall:

1. Be available within a reasonable time to persons wishing to file a statement of appeal subsequent to an agency ruling, and to respond to queries concerning the facts and process of the county decision; and

2. Make available within a reasonable time a complete set of files detailing the facts of the department or division ruling in question to persons wishing to file a statement of appeal, subsequent to an agency ruling. If a department or division is unable to comply with these provisions, the hearing examiner may authorize amendments to a statement of appeal to reflect information not made available to an appellant within a reasonable time due to a failure by a county agency to meet the foregoing requirements.

D. The statement of appeal shall:

1. ~~((i))~~ Identify the decision being appealed and the alleged errors in that decision~~((Further, the statement of appeal shall))~~;

2. ~~((s))~~ate specific reasons why the decision should be reversed or modified;

~~((and))~~

3. State the harm suffered or anticipated by the appellant~~((;))~~; and

4. Identify the relief sought.

E. The scope of an appeal shall be based principally on matters or issues raised in the statement of appeal.

68 F. Failure to timely file a notice of appeal, appeal fee or statement of appeal
69 deprives the examiner of jurisdiction to consider the appeal. As used in this section, filing
70 means actual receipt by the department required to be served.

71 SECTION 2. Ordinance 11502, Section 13, and K.C.C. 20.24.175 are each
72 hereby amended to read as follows:

73 **Case management techniques.** In all matters heard by the examiner, the examiner
74 shall use case management techniques to the extent reasonable including:

75 A. ((d))Limiting testimony and argument to relevant issues and to matters identified
76 in the pre-hearing order ((if applicable));

77 B. ((p))Pre-hearing identification and submission of exhibits ((if applicable));

78 C. ((s))Stipulated testimony or facts;

79 D. ((p))Pre-hearing dispositive motions ((if applicable));

80 E. ((u))Use of pro tempore examiners;

81 F. Voluntary mediation and mediation of complainant appeals; and

82 G. ((e))Other methods to promote efficiency and to avoid delay. (Ord. 11502 § 13,
83 1994).

84 SECTION 3. Ordinance 13263, Section 3, as amended, and K.C.C. 23.02.010 are
85 each hereby amended to read as follows:

86 **Definitions.** The words and phrases designated in this section shall be defined for
87 the purposes of this title as follows:

88 A. "Abate" means to take whatever steps are deemed necessary by the director to
89 return a property to the condition in which it existed before a civil code violation occurred

or to assure that the property complies with applicable code requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement or repair.

B. "Civil code violation" means and includes one or more of the following:

1. Any act or omission contrary to any ordinance, resolution, regulation or public rule of the county that regulates or protects the public health or the environment or the use and development of land or water, whether or not the ordinance, resolution or regulation is codified; and

2. Any act or omission contrary to the conditions of any permit, notice and order or stop work order issued pursuant to any such an ordinance, resolution, regulation or public rule.

C. "Director" means, depending on the code violated:

1. The director of the department of development and environmental services;
2. The director of the Seattle-King County department of public health, ~~((the~~ "local health officer" as that term is used in chapter 70.05 RCW~~(());~~
3. The director of the department of natural resources and parks;
4. The director of any other county department authorized to enforce civil code compliance;
5. Authorized representatives of a director, including but not limited to, the compliance officers and inspectors whose responsibility includes the detection and reporting of civil code violations; or
6. ~~((s))~~Such other person as the council by ordinance authorizes to utilize this title.

D. "Hearing examiner" means the King County hearing examiner, as provided in K.C.C. chapter 20.24.

E. "Mitigate" means to take measures, subject to county approval, to minimize the harmful effects of the violation where remediation is either impossible or unreasonably burdensome.

F. "Permit" means any form of certificate, approval, registration, license or any other written permission issued by King County. All conditions of approval, and all easements and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public are deemed conditions applicable to all subsequent plat property owners and their tenants and agents as permit requirements enforceable under this title.

G. "Person" means any individual, association, partnership, corporation or legal entity, public or private, and the agents and assigns of the individual, association, partnership, corporation or legal entity.

H. "Person responsible for code compliance" means either the person who caused the violation, if that can be determined, or the owner, lessor, tenant or other person entitled to control, use or occupy, or any combination of control, use or occupy, property where a civil code violation occurs, or both.

I. "Remediate" means to restore a site to a condition that complies with ((sensitive)) critical area or other regulatory requirements as they existed when the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition that does not pose a probable threat to the environment or to the public health, safety or welfare.

J. "Resolution" means any law enacted by resolution of the board of county commissioners prior to the establishment of the charter, or any health rule adopted by resolution of the board of health.

K. "Public rule" means any rule properly promulgated to implement code provisions. (Ord. 14309 § 1, 2002: Ord. 14199 § 246, 2001: Ord. 13263 § 3, 1998).

SECTION 4. Ordinance 13263, Section 5, and K.C.C. 23.02.040 are each hereby amended to read as follows:

Enforcement authority and administration.

A. In order to discourage public nuisances, make efficient use of public resources and otherwise promote compliance with applicable code provisions, a director may, in response to field observations or reliable complaints, determine that civil code violations have occurred or are occurring and may:

1. Enter into voluntary compliance agreements with persons responsible for code compliance;
2. Issue citations and assess civil penalties as authorized by K.C.C. chapter 23.20.
3. Issue notice and orders, assess civil penalties and fines and recover costs as authorized by K.C.C. chapter 23.24;
4. Order abatement by means of a notice and order, and if such abatement is not ~~((timely))~~ completed in a timely manner by the person responsible for code compliance, undertake the abatement and charge the reasonable costs of such work as authorized by K.C.C. chapter 23.24;

157 5. Allow a person responsible for code compliance to perform community
158 service in lieu of paying civil penalties as authorized by K.C.C. chapter 23.24;

159 6. Order work stopped at a site by means of a stop work order, and if such order
160 is not complied with, assess civil penalties, as authorized by K.C.C. chapter 23.28;

161 ~~((and/or))~~

162 7. Suspend, revoke or modify any permit previously issued by a director or deny
163 a permit application as authorized by K.C.C. chapter 23.24 when other efforts to achieve
164 compliance have failed; and

165 8. For de minimis violations, decide not to take enforcement action.

166 B. Should violations occur involving multiple county agencies, a lead agency
167 shall be designated by the executive to coordinate the county's response. Unless
168 otherwise determined by the directors of the affected departments, the department of
169 development and environmental services shall serve as the lead agency.

170 C. The procedures set forth in this title are not exclusive. These procedures shall
171 not in any manner limit or restrict the county from remedying civil code violations or
172 abating civil code violations in any other manner authorized by law. ~~((Ordinance 13263))~~
173 This title shall not be construed to affect the authority of the King County board of health
174 in enforcement of the King County board of health code or regulations.

175 D. In addition or as an alternative to utilizing the procedures set forth in this title,
176 a director may seek legal or equitable relief to abate any conditions or enjoin any acts or
177 practices which constitute a civil code violation.

178 E. In addition or as an alternative to utilizing the procedures set forth in
179 ~~((Ordinance 13263))~~ this title, a director may assess or recover civil penalties accruing

under this title by legal action filed in King County superior court by the prosecuting attorney on behalf of King County.

F. The provisions of this title shall in no way adversely affect the rights of the owner, lessee or occupant of any property to recover all costs and expenses incurred and required by this title from any person causing such violation.

G. A director may use the services of a collection agency in order to collect any fines, penalties, fees or costs owing under this title.

H. In administering the provisions for code enforcement, the director shall have the authority to waive any one or more such provisions so as to avoid substantial injustice by application thereof to the acts or omissions of a public or private entity or individual, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit has accrued to such entity or individual from a code violation and any necessary remediation is being promptly provided. For purposes of this clause, substantial injustice cannot be based on economic hardship.

I. The provisions of this title detailing county department administration of code compliance procedures are intended only for the purpose of providing guidance to county employees and are not to be construed as creating a basis for appeal or a defense of any kind to an alleged violation.

J. The provisions of (~~Ordinance 13263~~) this title authorizing the enforcement of non-codified ordinances are intended to assure compliance with conditions of approval on plats, unclassified use permits, zone reclassifications and other similar permits or approvals which may have been granted by ordinances which have not been codified, and

to enforce new regulatory ordinances which are not yet codified. Departments should be sensitive to the possibility that citizens may not be aware of these ordinances, and should give warnings prior to enforcing such ordinances, except in high risk cases. (Ord. 13263 § 5, 1998).

SECTION 5. Ordinance 13263, Section 6, and K.C.C. 23.02.050 are each hereby amended to read as follows:

Guidelines for departmental responses to complaints.

~~((A. The following guidelines should be applied by the departments, subject to departmental resource limitations, when responding to code compliance complaints. The timelines identified below may be modified by departmental rule, subject to council review and approval.~~

~~1. High risk investigations needing an urgent response (within twenty four hours to one week) include any cases in which:~~

~~a. there is an imminent likelihood of or actual bodily harm, damage to public resources or facilities, damage to real or personal property, public health exposure, or environmental damage or contamination; or~~

~~b. the sites and/or persons responsible for code compliance have a history of prior high or moderate risk violations.~~

~~2. Moderate risk investigations needing a prompt response (within seventy two hours to ten days) include cases where:~~

~~a. there is risk of bodily harm, damage to public resources and/or facilities, damage to real or personal property, or environmental damage or contamination; or~~

- 225 b. ~~the subject sites and/or persons responsible for code compliance have a~~
226 ~~history of prior low risk violations; or~~
- 227 c. ~~there are ongoing moderate or low risk violations; or~~
- 228 d. ~~more than five wrecked, dismantled or inoperative vehicles are found.~~
- 229 3. ~~Low risk investigations needing response as time permits (within two to four~~
230 ~~weeks of violation being identified by code compliance staff) include cases where:~~
- 231 a. ~~the violation is non-emergent, does not fit within the high risk or moderate~~
232 ~~risk categories and has only minor public impacts; and~~
- 233 b. ~~the violation is an isolated incident.~~

234 B.)) A department may adopt public rules under K.C.C. chapter 2.98 consistent
235 with the guidelines established in this chapter that set forth procedures for responding to
236 code compliance complaints. In developing the procedures, a department shall consider
237 the risks of injury, damage to public resources or facilities, real or personal property,
238 public health, environmental damage or contamination, and departmental resource
239 limitations. The ((response times set out in this section)) procedures are not
240 jurisdictional, and failure to meet them in any particular case shall not affect the county's
241 authority to enforce county code provisions with regard to that case. (Ord. 13263 § 6,
242 1998).

243 SECTION 6. Ordinance 13263, Section 7, and K.C.C. 23.02.060 are each hereby
244 amended to read as follows:

245 **Initial investigation.** This section sets forth guidelines for more specific
246 procedures to be used by each department in implementing ((Ordinance 13263)) this title.
247 The guidelines set forth in this section are not jurisdictional, and failure to meet them in

any particular case shall not affect the county's authority to enforce county code provisions with regard to that case.

A. Field verification.

Except in emergencies and for low risk case complaints, field verification should be made if possible prior to, concurrent with or shortly after notifying the owner, occupant, and/or other person responsible for code compliance of the potential or alleged violation. Low risk case complaints should be acknowledged by sending an informal letter to the person~~((s))~~ responsible for code compliance. The letter should state that a violation may have occurred, but has not been verified, and should ask the recipient to contact the department issuing the letter.

B. Advising interested parties of receipt of complaint ~~((and/))~~ or field investigation.

1. The owner, occupant and person responsible for code compliance, ~~((t))~~ if not an owner or occupant ~~((t))~~, should be advised of any complaint by personal contact, phone, posting ~~((and/))~~ or mail.

2. The complainant should be contacted by phone and, if possible, in person during the field visit.

C. To the extent possible, all departments with compliance requirement authority should record land-based violations in a database system, which should be accessible to all other departments.

D. To the extent possible, the department shall check its own records and the records of other agencies for previous violations on the site of the alleged violation or by the owner or occupant of the site or ~~((such))~~ any other person as may be responsible for

code compliance. Each department should develop and ~~((/or))~~ maintain a database system for tracking violations of its codes that is designed, to the extent possible, to be used in coordination with other departments.

E. Staff undertaking field investigations shall comply with the provisions of this title regarding right of entry. (Ord. 13263 § 7, 1998).

SECTION 7. Ordinance 13263, Section 8, as amended, and K.C.C. 23.02.070 are each hereby amended to read as follows:

Procedures when probable violation identified.

A. The department shall determine, based on information derived from sources such as field observations, the statements of witnesses, relevant documents and data systems for tracking violations and applicable county codes, whether or not a violation has occurred. As soon as a department has reasonable cause to determine that a violation has occurred, it shall document the violation and promptly notify the owner, occupant or other person responsible for code compliance.

B. Except as provided in subsection D of this section, a warning shall be issued verbally or in writing promptly when a field inspection reveals a violation, or as soon as the department otherwise determines that a violation has occurred. The warning shall inform the person determined to be responsible for code compliance of the violation and allow the person an opportunity to correct it or enter into a voluntary compliance agreement as provided for by this title. Verbal warnings shall be logged and followed up with a written warning within two weeks, and the site shall be reinspected within thirty days.

293 C. The guidelines in this section for warnings, notifications and re-inspections are
294 not jurisdictional, and failure to meet them in any particular case shall not affect the
295 county's authority to enforce county code provisions with regard to that case.

296 D. No warning need be issued in high-risk cases, emergencies, repeat violation
297 cases, cases that are already subject to a voluntary compliance agreement, cases in which
298 the violation creates a situation or condition that is not likely to be corrected within a
299 ~~((short))~~ reasonable period of time, cases in which a stop work order is necessary, or if
300 the person responsible for code compliance knows or reasonably should have known that
301 the action was a civil code violation.

302 E. A department may issue ~~((C))~~ citations ~~((may be issued in moderate and low-~~
303 ~~risk cases,))~~ if ~~((the department))~~ it determines ~~((it is probable))~~ that the violation ~~((can))~~
304 is likely to be a one-time occurrence or is likely to be fully corrected in a ~~((short))~~
305 reasonable period of time.

306 F. ~~((Notice and orders should be issued in all high risk cases in which a voluntary~~
307 ~~compliance agreement has not been entered into.))~~ A department may issue ~~((N))~~ notice
308 and orders ~~((may be issued))~~ in ~~((moderate and low risk))~~ cases where ~~((the department))~~
309 it determines that the violation is unlikely be fully corrected in a ~~((short))~~ reasonable
310 period of time.

311 G. The department shall use all reasonable means to determine and cite the
312 person ~~((or persons))~~ actually responsible for the violation occurring when the owner has
313 not directly or indirectly caused the violation.

314 H. If the violation is not corrected or a voluntary compliance agreement is not
315 achieved within a reasonable time period, a citation, notice and order or stop work order

should be issued. As a guideline, citations should be issued within sixty days from receipt of a complaint, and notice and orders should be issued within one hundred twenty days from receipt of a complaint. Stop work orders should be issued promptly upon discovery of a violation in progress.

I. Any complainant who provides a mailing address and requests to be kept advised of enforcement efforts should be mailed a copy of all written warnings, voluntary compliance agreements, citations, notice and orders, stop work orders and notices of settlement conferences issued by a department with regard to the alleged violation. ~~((Any complainant who is an aggrieved person may appeal a citation, notice and order, stop work order, a determination to enter into a voluntary compliance agreement or a determination not to issue a citation or order pursuant to the provisions of K.C.C. chapter 20.24, provided that the appeal shall be considered a civil proceeding, and any decision to pursue criminal sanctions shall remain the obligation of the prosecuting attorney, as set out in K.C.C. 23.02.030.))~~ (Ord. 14309 § 2, 2002; Ord. 13263 § 8, 1998).

SECTION 8. Ordinance 13263, Section 12, and K.C.C. 23.02.110 are each hereby amended to read as follows:

Right of entry. It is the intention of the council that any entry made to private property for the purpose of inspection for code violations be accomplished in strict conformity with constitutional and statutory constraints on entry(,) and the holdings of relevant court cases regarding entry. The right-of-entry granted by this title shall not supersede those legal constraints. The director is authorized to enter upon any property for the purpose of administering ~~((Ordinance 13263 provided that, the director shall make entry))~~ this title only if ~~((such))~~ entry is consistent with the constitutions and laws of the

339 United States and the state of Washington. If ~~((so))~~ required by the constitutions and
340 laws of the United States or the state of Washington, the director shall apply to a court of
341 competent jurisdiction for a search warrant authorizing access to ~~((such))~~ property for
342 ~~((such))~~ the purpose of administering this title. The court may upon such application
343 issue the search warrant for the purpose requested. (Ord. 13263 § 12, 1998).

344 SECTION 9. Ordinance 13263, Section 13, as amended, and K.C.C. 23.02.120
345 are each hereby amended to read as follows:

346 **Training and rulemaking.**

347 A. In order to ensure strict conformity with the constraints on entry imposed by
348 state and federal law and to ~~((assure))~~ ensure that county employees deal with the public
349 in a manner ~~((which))~~ that respects the rights of private property owners, the directors of
350 the department of development and environmental services, natural resources and parks
351 and other departments, as needed, shall ~~((develop and))~~ adopt internal procedures,
352 protocols and training programs governing the conduct of searches by county staff
353 responsible for code compliance~~((officers which shall be issued within nine months of~~
354 ~~the adoption of Ordinance 13263))~~.

355 B. Each department operating under this ~~((chapter shall))~~ title:

356 1. May adopt public rules, pursuant to K.C.C. chapter 2.98, and procedures to
357 implement the provisions of ~~((Ordinance 13263, and specifically the))~~ this title; and

358 2. Shall adopt procedures to implement guidelines ~~((set out in this chapter~~
359 ~~describing))~~ for reasonable and appropriate protocols for investigating code violations.

360 (Ord. 14199 § 247, 2001: Ord. 13263 § 13, 1998).

SECTION 10. Ordinance 12024, Section 13, as amended, and K.C.C. 23.10.040 are each hereby amended to read as follows:

Wrecked, dismantled or inoperative vehicles -- prohibited activity. No person may park, store or abandon a wrecked, dismantled or inoperative vehicle, or part thereof as those terms are defined in K.C.C. chapter 21A.06, on private property, except where the following conditions apply:

A. A vehicle or vehicle part is completely enclosed within a building in a lawful manner where it is not visible from the street or from other public or private property; or

B. A vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed auto repair business or licensed vehicle dealer and is fenced as required by state law. (Ord. 14309 § 11, 2002: Ord. 12024 § 13, 1995).

SECTION 11. Ordinance 12024, Section 14, and K.C.C. 23.10.120 are each hereby repealed.

SECTION 12. Ordinance 13263, Section 16, and K.C.C. 23.20.020 are each hereby amended to read as follows:

Effect.

A. ~~((Subject to the appeal provisions of K.C.C. chapter 23.36, a))~~ A citation represents a determination that a civil code violation has ~~((occurred))~~ been committed and that the cited party is a person responsible for code compliance. The determination is final unless contested as provided in this title.

B. Subject to ~~((the provisions of))~~ K.C.C. 23.02.130, a citation subjects the person responsible for code compliance to the civil fine prescribed by K.C.C. chapter 23.32.

C. ~~((Subject to the provisions of K.C.C. 23.02.130, t))~~ The person ~~((responsible for code compliance))~~ issued a citation shall ~~((either pay the civil fine assessed))~~ respond to the citation as provided in sections 12 through 14 of this ordinance within ~~((twenty one))~~ fourteen days of the date of ~~((issuance))~~ service of the citation ~~((or appeal the citation according to the procedures ((described)) in K.C.C. chapter 23.36))~~.

D. Failure to ~~((appeal))~~ respond to the citation within ~~((twenty one))~~ fourteen days shall render the citation a final determination that the conditions described in the citation existed and constituted a civil code violation and that the cited party is liable as a person responsible for code compliance.

E. Imposition of a civil fine creates a joint and several personal obligation in all persons responsible for code compliance who are served with ~~((notice of))~~ the ~~((violation))~~ citation. The prosecuting attorney on behalf of King County may collect the civil fines assessed by any appropriate legal means.

F. Issuance of a citation in no way limits a director's authority to issue a notice and order or stop work order to the same person responsible for code compliance pursuant to this title. Payment of the civil fine assessed under the citation does not relieve a person responsible for code compliance of his or her duty to correct the violation and ~~((or))~~ to pay any and all civil penalties accruing under a notice and order or stop work order issued pursuant to this title. (Ord. 13263 § 16, 1998).

SECTION 13. Ordinance 13263, Section 17, and K.C.C. 23.20.030 are each hereby amended to read as follows:

Contents. A citation shall contain the following:

A. ~~((Identification for))~~ A reasonable description of the location of the
~~((violation))~~ property on which the violation occurred;

B. The name and address of the person responsible for code compliance;

C. A brief description of the violation or violations found;

~~((C.))~~ D. A statement of the specific ordinance, resolution, regulation, public rule,
permit condition, notice and order provision, or stop work order provision that was
violated;

E. The date that the citation was served;

~~((D.))~~ F. A statement that the citation represents a determination that a civil code
violation has occurred and the cited party is subject to civil fines;

~~((E.))~~ G. A statement of the amount of civil fine assessed~~((and that the fine must~~
~~be paid within twenty one days))~~);

~~((F.))~~ H. A statement of the options provided in the title for responding to the
citation and the procedures necessary to exercise these options;

I. A statement that at any hearing to contest the determination the county has the
burden of proving, by a preponderance of the evidence, that the violation was committed;

J. A statement that at any hearing requested for the purpose of explaining
mitigating circumstances surrounding the commission of the violation, the person will be
deemed to have committed the violation;

426 K. A statement that the person must respond to the citation as provided in this
427 chapter within fourteen days;

428 ~~((G.))~~ I. A statement that failure to ((appear)) respond to the citation ((within
429 ~~twenty-one days)) or that failure to appear at a requested hearing renders the citation a~~
430 final determination that the conditions described in the citation existed and constituted a
431 civil code violation and that the cited party is liable as a person responsible for code
432 compliance; ~~((and))~~

433 ~~((H.))~~ L. A statement advising that a failure to respond or ((appeal)) appear at a
434 requested hearing may be referred to the prosecuting attorney for prosecution; and

435 M. A statement, made under penalty of perjury as provided in RCW 9A.72.085,
436 setting forth facts supporting issuance of the citation.

437 NEW SECTION. SECTION 14. A new section is hereby added to K.C.C. chapter
438 23.20 to read as follows:

439 **Response to citation.**

440 A. A person issued a citation must respond to a citation within fourteen days after
441 service of the citation in one of the following ways:

442 1. If the person issued the citation does not contest the determination, the person
443 shall pay the amount of the civil penalty specified in the citation. The record shall show a
444 finding that the person cited is the person responsible for code compliance;

445 2. If the person issued the citation does not contest the determination, but wishes
446 to explain the circumstances surrounding the commission of the violation, the person
447 shall request in writing a mitigation hearing and provide a mailing address to which
448 notice of the hearing may be sent; or

449 3. If the person issued the citation wishes to contest the determination that a
450 violation occurred or that the person issued the citation is responsible for the violation,
451 the person shall request in writing a contested hearing and provide a mailing address to
452 which notice of the hearing may be sent.

453 B. The person issued the citation shall respond to the citation by mail to the
454 address provided on the citation. The response shall be postmarked not later than
455 fourteen days after the date the citation was served.

456 C. If a person fails to respond to a citation within fourteen days, the person shall
457 be deemed to have committed the violation stated in the citation. The department may
458 assess the penalty specified in the citation.

459 NEW SECTION. SECTION 15. A new section is hereby added to K.C.C.
460 chapter 23.20 to read as follows:

461 **Mitigation hearing for citation.**

462 A. If a person requests a hearing in response to a citation to explain mitigating
463 circumstances surrounding the commission of the violation, the department shall notify
464 the hearing examiner that a mitigation hearing has been requested. The office of the
465 hearing examiner shall:

466 1. Schedule a hearing to be held within thirty days after the department provides
467 notice of the request; and

468 2. At least ten days before the date of the hearing, provide notice of the time,
469 place and date of the hearing by first class mail to the address provided in the request for
470 hearing.

471 B. The hearing examiner shall conduct an informal non-evidential hearing. The

person cited may produce witnesses, but witnesses may not be compelled to attend. A representative of the department may also attend and provide additional information, but no such attendance is required.

C. The hearing examiner shall determine whether the person's explanation justifies reduction of the civil penalty. In considering whether to reduce the civil penalty, the hearing examiner may consider mitigating factors necessary to achieve an equitable result and further the legitimate interests of the department.

D. After hearing the explanation of the person cited and any other information presented at the hearing, the hearing examiner shall enter an order finding that the person cited is responsible for the violation and assessing civil penalties in an amount determined by this section. The hearing examiner's decision constitutes the final agency action.

NEW SECTION. SECTION 16. A new section is hereby added to K.C.C. chapter 23.20 to read as follows:

Contested hearing for citation.

A. If a person requests a hearing in response to a citation to contest the finding that a violation occurred or that the person issued the citation is responsible for the violation, the department shall notify the hearing examiner that a contested hearing has been requested. The office of the hearing examiner shall:

1. Schedule a hearing to be held within sixty days after the department provides notice of the request; and
2. At least twenty days before the date of the hearing, provide notice of the time, place and date of the hearing by first class mail to the address provided in the request for

495 hearing.

496 B. Except as otherwise provided in this section, contested hearings shall be
497 conducted pursuant to K.C.C. 20.24.170 and the Rules of Procedure of the King County
498 hearing examiner. The hearing examiner may issue subpoenas for witnesses and order
499 limited discovery. The requirements of K.C.C. 20.24.145 relating to pre-hearing
500 conferences do not apply to the contested hearing.

501 C. If the rights of the person cited to notice that meets due process requirements
502 are not prejudiced:

503 1. A citation shall not be deemed insufficient by reason of formal defects or
504 imperfections, including a failure to contain a detailed statement of the facts constituting
505 the specific violation which the person cited is alleged to have committed; and

506 2. A citation may be amended prior to the conclusion of the hearing so as to
507 conform to the evidence presented.

508 D. The burden of proof is upon the county to establish the commission of the
509 violation by a preponderance of the evidence. The hearing examiner shall consider the
510 citation and any other written report made under penalty of perjury, as provided in RCW
511 9A.72.085, submitted by the person who issued the citation or whose written statement
512 was the basis for the issuance of the citation in lieu of that person's personal appearance
513 at the hearing as prima facie evidence that a violation occurred and that the person cited
514 is responsible. The statement and any other evidence accompanying the report shall be
515 admissible without further evidentiary foundation. Any additional certifications or
516 declarations authorized under RCW 9A.72.085 shall also be admissible without further
517 evidentiary foundation. The person cited may rebut the evidence and establish that the

violation did not occur or that the person contesting the citation is not responsible for the violation.

E. If the hearing examiner finds by a preponderance of the evidence that a violation did occur and that the person cited is responsible for the violation, the hearing examiner shall enter an appropriate order and impose the applicable penalty. If the violation has been corrected, the hearing examiner may reduce the civil penalty as provided in section 15C and D of this ordinance. If the hearing examiner finds by a preponderance of the evidence that the violation did not occur or that the person cited is not responsible for the violation, an order shall be entered dismissing the citation.

F. The hearing examiner's decision is a final agency action.

G. A person's failure to appear for a scheduled hearing shall result in an order being entered finding that the person cited is the person responsible for code compliance and assessing the applicable civil penalty.

SECTION 17. Ordinance 13263, Section 21, and K.C.C. 23.24.020 are each hereby amended to read as follows:

Effect.

A. Subject to the appeal provisions of K.C.C. chapter 23.36, a notice and order represents a determination that a civil code violation has ~~((occurred))~~ been committed, that the cited party is a person responsible for code compliance, and that the violations set out in the notice and order require the assessment of penalties and costs and other remedies specified in the notice and order.

B. Failure to correct the civil code violation in the manner prescribed by the notice and order subjects the person to whom the notice and order is directed to the use of

any of the compliance remedies provided by this title, including:

1. Additional civil penalties and costs;
2. A requirement that abatement, remediation ~~((and/))~~ or mitigation be performed;
3. ~~((a))~~ An agreement to perform community service as prescribed by this chapter;
4. ~~((p))~~ Permit suspension, revocation, modification ~~((and/))~~ or denial as prescribed by this chapter; and ~~((/or))~~
5. ~~((a))~~ Abatement by a director and recovery of the costs of abatement according to the procedures described in this chapter.

C. Any person identified in the notice and order as responsible for code compliance may appeal the notice and order within ~~((twenty one))~~ fourteen days according to the procedures ~~((described))~~ in K.C.C. chapter 23.36.

D. Failure to appeal the notice and order within the applicable time limits shall render the notice and order a final determination that the conditions described in the notice and order existed and constituted a civil code violation, and that the named party is liable as a person responsible for code compliance.

E. Issuance of a notice and order in no way limits a director's authority to issue a citation or stop work order to a person previously cited through the notice and order process pursuant to this title. Payment of the civil penalties assessed under the notice and order does not relieve a person found to be responsible for code compliance of his or her duty to correct the violation and ~~((or))~~ to pay any and all civil fines or penalties accruing under citations or stop work orders issued pursuant to this title. (Ord. 13263 § 21, 1998).

SECTION 18. Ordinance 13263, Section 33, as amended, and K.C.C. 23.24.140
are each hereby amended to read as follows:

Code compliance and abatement fund - authorized. All moneys collected from the assessment of civil penalties, from the recovery of the costs of pursuing code compliance and abatement, and from the recovery of abatement costs, both retroactively and prospectively, except those moneys designated for the ((sensitive)) critical areas mitigation fund as set forth in K.C.C. chapter 21A.24, shall be allocated to support expenditures for abatement and code enforcement administrative costs, including, but not limited to, personnel costs, and shall be accounted for through either creation of a fund or other appropriate accounting mechanism in the department issuing the notice and order under which the abatement occurred. Withdrawals from the moneys collected under this section for the purpose of funding administrative costs within the code enforcement section of the department of development and environmental services shall not exceed one hundred seventy-five thousand dollars in a calendar year. (Ord. 14815 § 1, 2003: Ord. 14526 § 4, 2002: Ord. 13263 § 33, 1998).

SECTION 19. Ordinance 13263, Section 37, as amended, and K.C.C. 23.32.010
are each hereby amended to read as follows:

Assessment schedule.

A.1. Civil fines and civil penalties for civil code violations shall be imposed for remedial purposes and shall be assessed for each violation identified in a citation, notice and order, voluntary compliance agreement or stop work order pursuant to the following schedule:

a. Citations

- | | |
|---|--------|
| (1) With no previous similar code violations | \$100 |
| (2) With one or more previous similar code violations | \$500 |
| (3) With two or more previous violations of K.C.C. Title 10 | Double |
- the rate of
the
previous
penalty

b. Violation of ~~((N))~~notice and ~~((O))~~orders and ~~((S))~~stop
~~((W))~~work ~~((O))~~orders

- | | |
|--|-------|
| (1) Stop work order basic penalty | \$500 |
| (2) Voluntary compliance agreement and notice and order
basic penalty | \$25 |
| (3) Additional initial penalties may be added in the
following amounts for violations where there is: | |
| (a) public health risk | \$15 |
| (b) environmental damage risk | \$15 |
| (c) damage to property risk | \$15 |
| (d) one previous similar code violation | \$25 |
| (e) two previous similar code violations | \$50 |
| (f) three or more previous similar code violations | \$75 |
| (g) economic benefit to person responsible for | \$25 |

violation

c. Reinspections following the issuance of a notice and order, if the

violation has not been abated in accordance with the notice and order:

- | | |
|---|--------------|
| <u>(1) First reinspection, which shall occur no sooner than the</u> | <u>\$150</u> |
| <u>day following the date compliance is required by the notice</u> | |
| <u>and order</u> | |
| <u>(2) Second reinspection, which shall occur no sooner than</u> | <u>\$300</u> |
| <u>fourteen days following the first reinspection</u> | |
| <u>(3) Third reinspection, which shall occur no sooner than</u> | <u>\$450</u> |
| <u>fourteen days following the second reinspection</u> | |
| <u>(4) Reinspections after the third reinspection, which shall</u> | <u>\$450</u> |
| <u>only be conducted immediately preceding an administrative</u> | |
| <u>or court ordered abatement or at the direction of the</u> | |
| <u>prosecuting attorney for the purpose of presenting evidence</u> | |
| <u>in the course of litigation against the person responsible for</u> | |
| <u>code compliance</u> | |

2. For the purposes of this section, previous similar code violations that can serve as a basis for a higher level of civil penalties include violations of the same chapter of the King County Code. Any stop work order or notice and order previously issued by the department shall not constitute a previous code violation for the purposes of this section if that stop work order or notice and order was appealed and subsequently reversed.

B. The penalties assessed pursuant to this section for any failure to comply with a notice and order or voluntary compliance agreement shall be assessed daily, according to the schedule in subsection A of this section, for the first thirty days following the date the

notice and order or voluntary compliance agreement required the code violations to have been cured. If after thirty days the person responsible for code compliance has failed to satisfy the notice and order or voluntary compliance agreement, penalties shall be assessed daily at a rate of double the rate for the first thirty days. Penalties may be assessed daily until the person responsible for code compliance has fully complied with the notice and order.

C. Penalties based on violation of a stop work order shall be assessed, according to the schedule in subsection A of this section, for each day the department determines that work or activity was done in violation of the stop work order.

D. Citations shall be subject to a one-time penalty only.

E. The director may suspend the imposition of additional civil penalties if the person responsible for code compliance has entered into a voluntary compliance agreement. If the person responsible for code compliance enters into a voluntary compliance agreement and cures the code violations, the director may also waive all or part of the accrued civil penalties in accordance with K.C.C. 23.32.050. Penalties shall begin to accrue again pursuant to the terms of the voluntary compliance agreement if any necessary permits applied for are denied, canceled or not pursued, or if corrective action identified in the voluntary compliance agreement is not completed as specified.

F. The civil penalties in this section are in addition to, and not in lieu of, any penalties, sanctions or fines provided for in any other provision of law. (Ord. 14309 § 6, 2002: Ord. 13263 § 37, 1998).

SECTION 20. Ordinance 13263, Section 40, and K.C.C. 23.32.040 are each

hereby amended to read as follows:

Civil penalty – ((sensitive)) critical areas.

A. The code compliance provisions for ((sensitive)) critical areas are intended to encourage compliance with K.C.C. chapter((s 21.54 and)) 21A.24, to protect ((sensitive)) critical areas and the general public from harm and to further the remedial purposes of this title. To achieve this, persons responsible for code compliance will not only be required to restore damaged ((sensitive)) critical areas, insofar as that is possible and beneficial, but will also be required to pay a civil penalty for the redress of ecological, recreation, and economic values lost or damaged due to their unlawful action.

B. The provisions in this section are in addition to and not in lieu of any other penalty, sanction or right of action provided by law for other related violations.

C. Where feasible, the owner of the land on which the violation occurred shall be named as a party to the notice and order. In addition to any other persons who may be liable for a violation, and subject to the exceptions provided in K.C.C. 23.02.130, the owner shall be jointly and severally liable for the restoration of a site and payment of any civil penalties imposed.

D. For the purposes of this section, violation of the ((sensitive)) critical area ordinance means:

1. the violation of any provision of K.C.C. chapter((s 21.54 or)) 21A.24 or ((of the administrative)) adopted public rules((promulgated thereunder));

2. the failure to obtain a permit required for work in a ((sensitive)) critical area;

or

639 3. the failure to comply with the conditions of any permit, approval, terms and
640 conditions of any ~~((sensitive))~~ critical area tract or setback area, easement or other
641 covenant, plat restriction or binding assurance or any notice and order, stop work order,
642 mitigation plan, contract or agreement issued or concluded pursuant to the above-
643 mentioned provisions.

644 E. Any person in violation of the ~~((sensitive))~~ critical areas ordinance may be
645 subject to civil penalties, costs and fees assessed as follows:

646 1. according to the civil penalty schedule included in this chapter of this title,
647 provided that the exact amount of the penalty per violation shall be determined by the
648 department based on the physical extent and severity of the violation; or

649 2. the greater of:

650 a. an amount determined to be equivalent to the economic benefit that the
651 person responsible for code compliance derives from the violation measured as the total
652 of:

653 1) the resulting increase in market value of the property;

654 2) the value received by the person responsible for code compliance; and

655 3) the savings of construction costs realized by the person responsible for
656 code compliance as a result of performing any act in violation of the chapter; or

657 b. code compliance costs ~~((such amount))~~ not to exceed \$25,000.00~~((+))~~
658 incurred by the county to enforce ~~((K.C.C. 21.54 and/or K.C.C. 21A.24))~~ the critical
659 areas ordinance against the person responsible for code compliance. (Ord. 13263 § 40,
660 1998).

661 SECTION 21. Ordinance 13263, Section 43, as amended, and K.C.C. 23.36.010
662 are each hereby amended to read as follows:

663 **Administrative appeal - filing requirements.**

664 A. Any person (~~((issued a citation or))~~) named in a notice and order or stop work
665 order and any owner of the land where the violation occurred for which a (~~((citation,))~~)
666 notice and order or stop work order is issued (~~((occurred and any complainant who is an~~
667 ~~aggrieved person pursuant o K.C.C. Title 20 and requests to be kept advised pursuant to~~
668 ~~K.C.C. 23.02.070H))~~) may file with the issuing department a notice of appeal of ((a
669 ~~citation,)) the notice and order((,)) or stop work order(~~((, determination to enter into a~~
670 ~~voluntary compliance agreement or a determination not to issue a citation or order))~~)
671 within fourteen days of the service of the (~~((citation,))~~) notice and order or stop work
672 order(~~((with the issuing department))~~).~~

673 B. If a notice of appeal has been filed within the time period provided (~~((herein))~~)
674 in this section, the appellant shall file a statement of appeal within twenty-one days of the
675 service of the (~~((citation,))~~) notice and order or stop work order with the issuing
676 department.

677 C. Any person (~~((named in))~~) issued a citation (~~((may appeal))~~) shall respond to the
678 citation ((by signing the citation, indicating on the citation that a hearing is requested, and
679 returning the citation to the issuing agency or department within twenty one days of its
680 service)) as provided in sections 15 through 17 of this ordinance.

681 D. A notice of appeal shall comply with the form, content and service
682 requirements of K.C.C. chapters 20.20 and 20.24 and adopted rules (~~((promulgated~~
683 ~~thereunder))~~). (14309 § 8, 2002: Ord. 13263 § 43, 1998).

SECTION 22. Ordinance 13263, Section 45, and K.C.C. 23.36.030 are each hereby amended to read as follows:

Administrative appeal - final order.

A. Following review of the evidence submitted, the hearing examiner shall make written findings and conclusions and shall affirm or modify the ((citation,)) notice and order or stop work order previously issued if the examiner finds that a violation has occurred. The examiner shall uphold the appeal and reverse the ((citation or)) order if the examiner finds that no violation has occurred.

B. If an owner of property where a violation has occurred has affirmatively demonstrated that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, ((such)) the property owner shall be responsible only for abatement of the violation. Strict compliance with permit requirements may be waived regarding the performance of such an abatement in order to avoid doing substantial injustice to a non-culpable property owner.

C. The hearing examiner's final order shall be final and conclusive unless proceedings for review of the decision are properly commenced in superior court within the time period specified by state law.

D. A final order by the hearing examiner affirming or reinstating a citation, notice and order or stop work order renders such citation, notice and order or stop work order a final agency order. (Ord. 13263 § 45, 1998).

705 NEW SECTION. SECTION 23. A new section is hereby added to K.C.C.

706 chapter 23.36 to read as follows:

707 **Complaint appeal of environmental violations.**

708 A. A complainant who is an aggrieved person pursuant to K.C.C. Title 20 and
709 requests to be kept advised of enforcement efforts pursuant to K.C.C. 23.02.070I may file
710 a notice of appeal of the inadequacy of a citation, notice and order, or stop work order, a
711 determination to enter into a voluntary compliance agreement or a determination not to
712 issue a citation or notice and order as follows:

- 713 1. A violation of K.C.C. chapter 9.12 or 21A.24 must be alleged;
- 714 2. The complainant first must request in writing that the department take
715 enforcement action under this title. The written request for enforcement action shall:
 - 716 a.. Identify the location of the alleged violation;
 - 717 b. If known, identify the property owner or other person responsible for the
718 violation;
 - 719 c. State the facts supporting the complainant's belief that a violation of K.C.C.
720 chapter 9.12 or 21A.24 has occurred or is about to happen or why code compliance action
721 taken by the department is inadequate;
 - 722 d. Include the name, mailing address and contact information for the
723 complainant; and
 - 724 e. Be signed under penalty of perjury, as provided in RCW 9.72.085.

725 B. A person who has filed a request for enforcement action under subsection A of
726 this section may appeal the department's action on the request to the hearing examiner, if:

- 727 1. The department has not responded to the request within twenty-eight days

after the request has been served on the department;

2. The department states in writing within twenty-eight days that it will not issue a citation, notice and order, or stop work order; or

3. The department has responded to the request within twenty-eight days after the request has been served on the department but has not issued a citation, notice and order, or stop work order within sixty days after the request has been served on the department;

C. An appeal under this section shall be filed within twenty-one days after the date the person is authorized to file an appeal under subsection B of this section. The hearing on an appeal authorized by this section is subject to the following procedural requirements:

1. The person alleged by the complainant to have committed the violation and the owner of property subject to the proposed enforcement action shall be served with all notices and are entitled to participate in the hearing as necessary parties;

2. Discovery orders directed to the department or other county agencies shall be limited to the production of files and documents in the possession of the department or agency and generated since 1990 concerning the affected property or adjacent properties sharing the same environmental feature or characteristic ;

3. The complainant must demonstrate by a preponderance of the evidence that a violation of K.C.C. chapter 9.12 or 21A.24 has occurred and that:

a. The complainant complied with the requirements of subsection B of this section;

b. The complainant is an aggrieved party as provided in K.C.C. Title 20;

751 c. Failure by the department to take enforcement action as requested has
752 caused or will result in significant environmental harm; and
753 d. The person alleged by the complainant to have committed the violation or
754 the owner of the property committed the violation.

755 D. If the appeal is granted, the hearing examiner shall direct the department to
756 take appropriate enforcement action within a specified time frame. The hearing examiner
757 may retain jurisdiction over the proceeding to assure compliance with decision
758 requirements.